DOCUMENT RESUME

ED 317 640 UD 027 346

TITLE	The Second International Conference on Indochinese Refugees: A New Humanitarian Consensus?
INSTITUTION	Refugee Policy Group, Washington, DC.
SPONS AGENCY	Edna McConnell Clark Foundation, New York, N.Y.; Ford Foundation, New York, N.Y.; German Marshall Fund of the United States, Washington, D.C.; John D. and Catherine T. MacArthur Foundation, Chicago, IL.; Pew Memorial Trust, Philadelphia, Pa.; Rockefeller Foundation, New York, N.Y.
PUB DATE	May 89
NOTE	45p.
PUB TYPE	Reports - Research/Technical (143) -- Reports - Evaluative/Feasibility (142)
EDRS PRICE	MF01/PC02 Plus Postage.
DESCRIPTORS	*Asian Americans; Cambodians; Conferences; Foreign Countries; *Humanitarianism; *Indochinese; Laotians; Political Influences; Public Policy; *Refugees; Relocation; Socioeconomic Influences
IDENTIFIERS	Asylum; Cambodia; *Indochina; Laos; Repatriation; *Southeast Asians; Vietnam

ABSTRACT

This paper was written in anticipation of the International Conference on Indochinese Refugees (ICIR), held in June 1989 in Geneva (Switzerland). The ICIR was convened to respond to chronic refugee problems in the region, first addressed in the July 1979 Meeting in Geneva on the Situation of Refugees and Displaced Persons in Southeast Asia. It is the intent of the paper to draw attention to the opportunities and potential pitfalls presented by the Comprehensive Plan of Action slated to be adopted at the Conference. The paper is comprised of a foreword, an introduction, and four sections. The first section, "The Refugee Situation in Southeast Asia," describes the history and scope of the problem. The second section, "The 1989 International Conference on Indochinese Refugees," reviews events leading up to the ICIR. The third section, "The Comprehensive Plan of Action," comprises the following parts: (1) "The Broad Framework"; (2) "Deterrence of 'Clandestine Departures'"; (3) "Programs for Legal Departure"; (4) "Ensuring Safe Arrival and Protection for Asylum Seekers"; (5) "Determination of Refugee Status"; (6) "Continued Resettlement of Refugees"; (7) "Repatriation"; (8) "The Situation of Laotian Refugees in Thailand"; and (9) "Cambodian Displaced Persons at the Thai Border." The fourth section, "Conclusion," recapitulates the need for international consensus. The paper includes one table. (AF)

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THE SECOND INTERNATIONAL CONFERENCE ON INDOCHINESE REFUGEES: A NEW HUMANITARIAN CONSENSUS?

MAY 1989

The Refugee Policy Group (RPG) is an independent, non-profit organization established in 1982 to improve international and domestic policy on refugee issues. The first center of its kind anywhere, RPG informs policymakers, program implementors and researchers through its reports, briefings, meetings, and resource center. Major financial support has been provided by the Ford Foundation, Edna McConnell Clark Foundation, John D. and Catherine T. MacArthur Foundation, Pew Charitable Trusts, Rockefeller Foundation, and The German Marshall Fund of the United States.

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FOREWORD

For the last ten years, the international response to the plight of Indochinese asylum seekers has been guided by arrangements agreed to at the July 1979 Meeting in Geneva on the Situation of Refugees and Displaced Persons in Southeast Asia. In response to urgent appeals for new action to address the chronic refugee problems still plaguing the region, the Secretary General of the United Nations convened a second Geneva conference: the International Conference on Indochinese Refugees (ICIR), which took place from 13-14 June of this year. Fully one decade after the first historic meeting, the ICIR marked the beginning of a new chapter in the continuing drama of refugee movements in Southeast Asia. There is cause for both concern and optimism about the way in which this chapter is likely to unfold.

The concern derives from an understanding of the roots of the Conference. During the past two years, there has been an increasing reluctance on the part of Southeast Asian countries of first asylum to provide protection to those seeking entry. Pushbacks of new arrivals and weakened attempts to prevent acts of piracy towards refugees in the Gulf of Thailand are but the most extreme manifestations of this deteriorating situation. To a large extent, the initial stimulus for the ICIR was a desire to halt the influx of Vietnamese boat people rather than to find lasting and humane solutions to an enduring problem.

The optimism stems from a range of positive political developments in Southeast Asia -- such as the evident intention of Hanoi to withdraw its troops from Cambodia, and its tentative steps to improve economic and human rights conditions within Vietnam -- which have overtaken the events that prompted the Conference. The rapidly changing situation in the region provides opportunities for moving beyond the emergency responses formulated ten years ago towards a more comprehensive set of policies.

The new framework for handling refugee problems that has evolved during the past year is, on its face, an essentially sound one. At this year's Geneva Conference, representatives of some 74 countries endorsed a Comprehensive Plan of Action for the Indochinese refugee problem. Most importantly, under the new Plan, the Southeast Asian countries of first asylum have guaranteed humane treatment for all asylum seekers. For the first time, all Vietnamese asylum seekers must now undergo a process to determine their individual status as refugees.

Vietnam will allow for voluntary repatriation and reintegration of people determined not to be refugees, while taking steps to deter future clandestine movements and ease the way for normal emigration. The Western countries and Japan have renewed their commitments to provide adequate assistance for the care of asylum seekers in the region, and to resettle those determined to be refugees.

The ICIR mandated a Steering Committee, made up of representatives of 15 concerned countries and chaired by the United Nations High Commissioner for Refugees, to work out technical arrangements for setting the new Plan in operation. The Committee is to make a general assessment of the Plan's implementation in October of this year, and will make recommendations for additional measures necessary to achieve the goals set by the ICIR.

How this new framework is actually implemented is the major question still to be answered. If implemented with good will and humanitarian intent, the Comprehensive Plan of Action will prove beneficial to all concerned, especially those now facing dangers in their clandestine departure from Vietnam and Laos. On the other hand, if major operational issues are inappropriately handled, a further deterioration in the protection provided to refugees will result. Moreover, failure to find effective but humane solutions to the refugee problem will impede efforts to improve conditions within Indochina and may prove to be a major source of tension between countries in the region and the West.

This paper, re-published here in its original form, was written in May 1989, in anticipation of the June Conference. It provides background to the events leading up to the ICIR, and discusses at length the various issues that were addressed in Geneva. The paper outlines both the opportunities and the problems presented by the Comprehensive Plan of Action; and it highlights those areas of concern which will require serious international attention during the coming months. A tremendous challenge now faces the international community as it works to achieve the goals set by the ICIR.

The paper is the product of a joint RPG staff effort. Its major contributors were Michael Knowles, RPG Research Analyst, and Susan Forbes Martin, Senior RPG Associate.

Dennis Gallagher
Executive Director
September 1989

INTRODUCTION

In July of 1988, the foreign ministers of the Association of Southeast Asian Nations (ASEAN) meeting in Bangkok highlighted two crucial issues facing the region: the conflict over Cambodia, and the refugee crisis. The ASEAN ministers issued a resolute call for the convening of a new International Conference on the problem of the continued flight of Indochinese refugees in the region. Then U.S. Secretary of State George Schultz and other Western leaders present at the meeting affirmed their support for such a Conference, provided that substantive dialogue precede it to ensure a constructive and comprehensive approach to the matter.

In early March 1989, after seven months of consultations by a special intergovernmental working group, a "Preparatory Conference" was held in Kuala Lumpur. This meeting approved a draft proposal for a "Comprehensive Plan of Action" for achieving durable solutions to the region's refugee problem. At the request of the participating countries, the Secretary General of the United Nations is expected to convene a formal International Conference in mid June in Geneva.

The need for a more comprehensive approach to the refugee situation in Southeast Asia is clear. Fourteen years after the onset of the Indochinese exodus, people continue to leave clandestinely -- often at great risk to their own lives. The reasons for the continued movements are complex, with growing doubts among observers and policy makers in countries of first asylum and permanent resettlement whether **all** persons leaving can be rightly considered **refugees**, as defined by international law.[1] Yet, with continued unstable conditions in the countries of Indochina, and less than satisfactory mechanisms for legal emigration, the alternatives to clandestine departure are presently inadequate.

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[1] The United Nations Convention Relating to the Status of Refugees (1951), together with the subsequent U.N. Protocol of 1967, defines the term "refugee" as: "any person who...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his habitual residence as a result of such events, is unable, or owing to such fear, is unwilling to return to it."

Changing perceptions of the nature of the problem, and differing approaches to its resolution, have resulted in a breakdown of existing international arrangements for responding to mass exodus in the region -- and, consequently, a deterioration of conditions of asylum and protection for Indochinese refugees and migrants -- over the course of the last few years. Asylum seekers have all too frequently been forced into life-threatening circumstances, with refugee boats being pushed back to the high seas and persons arriving overland denied entry at borders. Within this context, incidents of piracy and other acts of violence towards persons in flight have increased to alarming levels, reminiscent of the situation at the height of the refugee crisis of 1978-80.

The June Conference provides an opportunity for developing and putting into place a new framework for addressing the continued movements of people in Southeast Asia. It is important that such a framework, while providing the basis for an effective international response to the present crisis, also be flexible enough to take into account the rapid changes taking place in the overall political context of the region.

With Vietnam's evident intention to withdraw its troops from Cambodia, and accelerated momentum towards a resolution of that decade-old conflict, the non-communist leaders of the Association of Southeast Asian Nations are taking new steps to mend fences with old enemies in Indochina. At a time when steady growth and development have made the region one of the world's brightest economic spots, Thailand's prime minister Chatichai Choonhavan recently voiced the hope that Indochina would be transformed "from a battleground to a marketplace."

Notably, the May 1989 summit meeting between the leaders of the Soviet Union and the People's Republic of China has resulted in normalization of relations between the two super-powers, after more than a quarter century of bitter estrangement. Most significantly, this development will allow them to shift their energies away from military confrontation towards desperately needed economic development and reforms at home, and -- hopefully -- more positive cooperation in world affairs. It is expected that this changed relationship will enable the two powers to exert considerable influence in the resolution of the Cambodian conflict.

These developments offer real possibilities for peace and stability in Southeast Asia, and hold the potential for a more comprehensive approach by which to address the complex dimensions of the refugee crisis. For the first time since the United Nations sponsored Meeting on Refugees and Displaced Persons in Southeast Asia in Geneva, in July 1979, it has become possible to consider long-term solutions beyond measures which have focused primarily on emergency relief assistance to displaced persons, and third-country resettlement for the majority of asylum seekers.

Because of the changing nature of the regional landscape -- and the uncertainties such change brings -- it is critical that the development of a new consensus on handling refugee problems be followed by close attention to the implementation of the particular arrangements agreed to by the Conference. Although the proposed plan of action holds the potential for significantly improving the Indochinese refugee situation, some grave dangers are also posed -- in that a failure to appropriately resolve major operational issues may well lead to further deterioration of protection for refugees.

It is the intent of this paper to draw attention to the opportunities, as well as the potential pitfalls, presented by the Comprehensive Plan of Action to be adopted by the Conference. Towards this end, the paper:

- reviews developments which have led up to the decision to convene the June Conference;
- outlines and comments on the general policy framework being proposed for endorsement by the Conference;
- analyzes the elements of the Comprehensive Plan of Action and the interrelationships among them;
- calls attention to the situations of Cambodians and Laotians, noting that, as at the 1979 Meeting on Southeast Asian refugees, the primary focus of this convening is on the movement of people out of Vietnam; and

- stresses that the effectiveness of the agreements reached in Geneva will be determined by their implementation. In this regard, the paper identifies issues which need to be discussed further and monitored closely as follow-up to the Conference.

THE REFUGEE SITUATION IN SOUTHEAST ASIA

Since the 1975 victories of communist forces in Vietnam, Cambodia and Laos, over two million refugees and displaced persons have fled to neighboring countries in Southeast Asia or abroad. More than 1.5 million persons have found permanent resettlement in the United States, China, Canada, Australia and Western Europe, with about 500,000 remaining in Southeast Asian camps and holding centers, the vast majority in Thailand.

The 1979 Geneva Meeting, convened by the U.N. Secretary General and attended by sixty-five Governments, established the basic framework for responding to the exodus of refugees in the region. That framework was designed primarily to address the problems of boat people from Vietnam, but was extended, on a more limited basis, to handle refugee movements from Laos and Cambodia as well. Originally intended as a short term strategy for the emergency situation which prevailed at that time, the arrangements agreed to at the 1979 Meeting remained in force for most of the following decade.

The essentials of the 1979 agreement were that neighboring countries in the region would allow safe refuge to Indochinese asylum seekers for a limited period of time. The United Nations High Commissioner for Refugees (UNHCR), on a presumptive basis, would treat all of those fleeing as refugees and would establish and support camps for their care and maintenance. The willingness of the Southeast Asian countries to provide what is generally termed "first asylum" was contingent on a sustained commitment by "third countries" (the major industrialized countries in the West, and Japan) to find longer term solutions to these movements. This commitment has been maintained, in large part, by substantial international relief assistance and through the permanent resettlement of large numbers of refugees to third countries. Thus, the Southeast Asian countries would not be left alone to cope with the economic, ethnic or political issues inevitably associated with the integration of large, new immigrant populations.

Today, overall camp populations are considerably lower, and the rates of arrival of new refugees have come no where near those of the 1978-1980 period, when the situation reached crisis proportions. Yet, the combined factors of continuing arrivals, high birth rates in the camps, and

a decline in resettlement admissions to third countries have caused considerable concern among the countries of first asylum.

FIRST ASYLUM POPULATION AS OF MARCH 31, 1989*

Country	Vietnamese	Lowland	Highland	Khmer	Total
Thailand	13,904	17,071	52,180	15,899	99,054
Hong Kong	26,458				26,458
Macau	431				431
Indonesia	2,449				2,449
Malaysia	18,320				18,320
Philippines	4,833				4,833
Singapore	188				188
Other	723				723
Total	67,306	17,071	52,180	15,899	152,456

* Does not include population in Refugee Processing Centers (RPCs) or the roughly 350,000 Cambodian Displaced Persons in Thailand.

Source: U.S. Department of State

When arrivals of Vietnamese in 1987-88 rose significantly above the levels of preceding years, countries throughout the region indicated their intention to review and tighten up their policies of offering temporary asylum to all arrivals. Thailand captured international attention in early 1988 by denying entry and pushing back to sea newly arriving boat people. Informed observers report that more than 3,000 boat people have been pushed back during the last year, with more than 200 known deaths. While such measures are no longer official Thai policy, pushback incidents have continued to occur with tragic frequency in coastal areas. Boat people who manage to reach shore without being "re-directed" are detained at a holding center near the Cambodian border, pending a determination of their refugee status and a possible return to Vietnam.

In June of 1988, the Hong Kong authorities and the British government embarked on a new policy, under which all newly arriving boat people are considered illegal entrants and are subject to return to Vietnam unless they are determined to have legitimate claims to refugee status. Intended to be a firm measure of deterrence to new arrivals, Hong Kong's implementation of its "refugee screening" program has come under serious criticism. Contrary to expectations, the influx has continued at an alarmingly high rate, with over half of the 31,500 boat peoples now in the colony having arrived since the policy went into effect (figures as of mid-May 1989).

Following the Kuala Lumpur Preparatory Conference in March of this year, the ASEAN countries of first asylum announced a similar policy, stating that, henceforth, all newly arriving boat people would be denied access to third-country resettlement, until their individual claims to refugee status can be established. It is expected that a new region-wide refugee status determination program will be endorsed by the International Conference in June, and will commence as soon as procedures can be worked out and resources allocated for its operation.

In observing the present situation, it is apparent that there continue to be disagreements about the causes of these movements, with a growing assumption among governments both within the region and in resettlement countries that an increasing number of people are migrating primarily for economic and social reasons. Some regional leaders see the very duration of the problem as a negative indicator, finding it difficult to characterize the majority of today's asylum seekers as political refugees, fourteen years after the fall of Saigon.

Some international refugee advocates, however, caution that socio-economic factors can, in fact, constitute persecution -- especially in the case of persons who are marginalized in a socialist society because of their class background or association with "enemy" regimes. Further, such critics hold that current international instruments defining refugee status are too narrow. The refugee definition, they argue, should also take into consideration persons who feel compelled to leave countries where basic human rights are violated, even though they cannot claim to have been persecuted as individuals or as members of a particular social group.

With all of these arguments in mind, it remains clear that many individuals continue to leave Vietnam for a mixture of reasons. New arrivals in the region's camps do not often cite a single motivating factor for their difficult decisions to undertake such dangerous journeys to uncertain futures overseas. It is apparent, however, that, almost without exception, people leaving Vietnam do not do so in order to seek indefinite asylum in neighboring ASEAN countries, but in the expectation of eventual resettlement in Western countries -- most particularly the United States, Canada and Australia.[2]

This raises the important question of what significance such expectations have in motivating people to make their journey. Perhaps even more difficult is the question of to what extent the **status quo** arrangement, of temporary asylum predicated on large scale resettlement outside the region, may have exacerbated the continuing exodus from Vietnam. In that context, resettlement in the West is seen as an attractive alternative to many would-be asylum seekers who may not be personally subject to persecution, but who suffer nonetheless from extremely difficult social and economic conditions.

That conditions in Vietnam are exceedingly difficult is not disputed. Rather the issue, as it is increasingly raised, is whether those who are leaving are **refugees** as defined by international law. Given widespread doubts concerning the factors which compel the continued exodus of people from the three countries of Indochina, it is not surprising that presumption of **prima facie** refugee status for all persons leaving those countries is no longer seen as tenable by many concerned parties. Major resettlement countries, such as the United States and Australia, have long applied refugee determination criteria in making decisions about whom they will admit for resettlement. Countries of first asylum argue that they cannot be expected to provide indefinite temporary refuge to persons denied refugee status and resettlement opportunities by third countries.

The use of refugee criteria as a requirement for admission by Western immigration officials processing applications of Indochinese asylum seekers has been a particular point of contention between the resettlement and first-asylum countries. While maintaining the right to

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[2] Pack, Mary E. The Human Dimension of Long-term Encampment: Vietnamese Boat Refugees in First Asylum Camps. April 1988: pg. 5.

make individual status determinations and apply additional selective resettlement criteria for applicants, Western countries have at the same time pressed regional authorities to maintain an "open door policy" of providing unrestricted and indefinite temporary asylum to **all** persons arriving from Indochina.

Third-country rejections of applications for refugee status, accompanied by steadily decreasing levels of resettlement admissions, have contributed to the buildup of a population of long-staying refugees in countries of first asylum. Understandably, this has been a frustrating situation for Southeast Asian leaders, who have long stated their opposition to being left with what they term "residual populations" of Indochinese "illegal migrants." Last year, when the overall number of newly arriving boat people exceeded that of departures for resettlement for the first time since 1979, countries like Thailand forced the situation to a head by signalling their intent to enact stricter policies of their own.

The phenomena of "long-stayers" has become a major issue for the countries of first asylum in the region. The UNHCR definition of the term "long-stayer" is a refugee who has resided in a first-asylum camp for three years or more. Disagreements remain between the resettlement countries and the countries of first asylum regarding the future of these individuals -- that is, whether they are to remain and perhaps be absorbed locally in the region, or be resettled abroad under new cooperative programs by third countries.

Regional authorities often refer to the problem in terms of **all** Indochinese who have been in first-asylum camps for long periods of time. It bears clarifying, however, that the crucial concern for the first-asylum countries is, in fact, the growing number of long-staying **Vietnamese** boat people in camps throughout the region, who have few options for resettlement and are unwilling to repatriate.

According to UNHCR figures, the total number of Vietnamese long-stayers for the region, as of August 1988, was just over 5,000, about 75% of whom were in Hong Kong. Additionally, there are some 20,000 Vietnamese who have been in camps for less than three years, but who have been rejected, or are considered otherwise ineligible for resettlement, by most third countries. These potential long-stayers are a source

of increasing concern, as there are few options available to them under the present circumstances.

In comparison to the presence of almost 70,000 Laotian and Cambodian long-stayers in Thailand, or to the region's Vietnamese refugee camp populations of 1980, these are relatively low figures. However, because of historic political and ethnic tensions, Southeast Asian leaders express their greatest concern over the prospect of being pressed to provide prolonged temporary asylum for refugees from Vietnam -- regardless of their numbers.

The breakdown of the system for handling regional refugee problems, and the lack of a workable range of humane alternatives, has led to a potentially explosive situation for the countries of temporary asylum -- as well as for the "refugee-producing" countries themselves. It is likely that difficult political and socio-economic conditions in the countries of Indochina, as well as hopes of resettlement abroad, will continue to compel persons to leave for some time to come. At the same time, it is clear that international attention must be re-focused on a set of issues which are no longer being addressed adequately by arrangements designed to deal with the particular emergency situation of 1979.

THE 1989 INTERNATIONAL CONFERENCE ON INDOCHINESE REFUGEES

In view of the breakdown of previously established arrangements for handling refugee movements, broad international support has been given to ASEAN's appeal for a new Conference to address the present refugee crisis. The countries concerned have expressed hope that such a Conference will frame a comprehensive new strategy for dealing with the continuing movements of people from Indochina. The Conference, to be convened in Geneva by the U.N. Secretary General, is scheduled for 13-14 June of this year.

To ensure adequate preparation for the Conference, an informal working group was established by seventeen Asian and Western countries, with the UNHCR as the coordinating agency. Significantly, the group included representatives of Vietnam and Laos as active participants. Following the July 1988 ASEAN Foreign Ministers Meeting, a series of consultations were held in Bangkok and Kuala Lumpur, to clarify issues and country positions, propose Conference agenda, and lay the negotiating groundwork for the more formal agreements to be reached at the Conference itself. Out of this consultative process, the outline of a general consensus on the main issues was achieved, and a "Preparatory Conference" was convened in Kuala Lumpur, from 7-9 March of this year.

At the Preparatory Conference, high-level officials of the concerned countries conducted substantive negotiations on crucial issues and discussed various means of implementing the new arrangements under consideration. The focal point of discussion was a draft declaration proposed by the working group, which outlines what is termed the "Comprehensive Plan of Action". A general agreement was reached in Kuala Lumpur, to forward the draft to the U.N. Secretary General for consideration and endorsement by the June Conference.

THE COMPREHENSIVE PLAN OF ACTION

The Comprehensive Plan of Action (referred to hereafter as the "Plan") is designed to put into place a broad framework for addressing the movements of Vietnamese and, to a lesser extent, Laotians into neighboring countries. At the June Conference, the Foreign Ministers of the participating countries are expected to formalize the agreement and endorse a declaration calling for a new, comprehensive approach for resolving refugee problems in the region.

The Broad Framework

Most fundamentally, the Plan seeks to find effective ways to address the root causes of mass exodus while more firmly establishing international responsibility -- including that of countries of asylum, countries of resettlement, and, ultimately, countries of origin -- for the protection of refugees and asylum seekers. An important element in this effort must be to regularize channels of legal departure for persons wishing to emigrate, while ensuring that those still compelled to flee as refugees are afforded safe haven and humane treatment until long-term solutions to their plight can be found. To accomplish these objectives, the Plan calls for a multi-faceted approach, including: controls on clandestine departure; enhancement of legal immigration channels; safe reception, and guaranteed access for all asylum seekers to a process for determining their refugee **bonafides**; the assumption of responsibility by countries of asylum for identifying and then protecting those who are determined to be refugees; voluntary repatriation of migrants who fail to meet the refugee definition; and continued resettlement of refugees.

The new framework, with proper implementation, will differ from the old in several important respects and will be similar in others. First, it moves towards, but does not result in, a de-coupling of the provision of first asylum from a prerequisite commitment by countries **outside** the region to the large scale resettlement of Vietnamese. The Plan links first asylum to the determination of refugee status. All asylum seekers are to be permitted safe entry and given temporary refuge until individual determinations of their status can be made. In this respect, the countries of

the region affirm their responsibility to uphold international standards for receiving and protecting asylum seekers.

Yet, while safe reception and temporary asylum is linked to status determination, it appears that the continued provision of asylum to those determined to be legitimate refugees remains linked to resettlement. In this sense, the Plan does not differ significantly from the 1979 framework. The Plan does not spell out what, if any, continuing responsibility the countries of asylum will have towards those they determine to be refugees. Instead, it pointedly states that third-country resettlement programs will accommodate all who successfully pass the refugee screening process.

Second, the Plan seeks more regular relationships with Vietnam regarding both departure and return. By contrast to the earlier framework, which essentially viewed Vietnam as a pariah nation whose departing citizens would be considered refugees on a presumptive basis, the Plan assumes that some, if not most, Vietnamese citizens abroad should be able to afford themselves of their own government's protection. The Plan calls for Vietnam to control clandestine departure while simultaneously putting into place mechanisms to improve access to legal departure programs.

The active participation of both Vietnam and Laos in the Conference are indicative of the changing nature of their relationships with the international community in general, and with the ASEAN countries in particular. Further, it evidences a new seriousness on their parts, regarding the impact movements of people from their territories have on neighboring countries -- and the imperative for their responsible involvement in helping to address the problem.

Third, movements of people out of Vietnam and Laos are to be handled in a humanitarian manner, within a human rights framework, as described in the Plan. The criteria for determining refugee status will be those recognized by the 1951 Refugee Convention, bearing in mind the 1948 Universal Declaration of Human Rights, and are to be applied in a humanitarian spirit. Problematic, however, is the reality that -- as under the earlier framework -- the Southeast Asian countries continue to define the problem as one of illegal migration while the Western countries view it as a refugee issue. The humanitarian basis for the new framework is not, at present, very clearly or forcefully articulated by the Plan. Yet, the

measures proposed by it hold the potential for viewing movements from Vietnam in a broader, more comprehensive manner, which better corresponds to the complexities of the movements themselves. Further, the Plan provides a general outline from which a more effective framework can emerge, and longer term solutions can be developed.

Fourth, the Plan suggests the possibility, for the first time, of the involuntary return of those who do not meet the criteria for consideration as refugees -- although it stops considerably short of calling for this specifically. With Vietnam itself arguing strongly against ...y involuntary return of its citizens, the Plan indicates provisions for voluntary repatriation only. However, the possibility of involuntary return is implied by wording to the effect that, if sufficient progress is not made towards the objective of large scale voluntary return, "the alternatives recognized as being acceptable under international practices would be examined" [Article 6(c)].

The Plan focuses primarily on Vietnamese with a short section on Laotian asylum seekers. Not under consideration at all, in the present dialogue, is the situation of displaced Cambodians along the Thai-Kampuchea border. There is a general sense that resolution of their status will depend on the political and military events unfolding in Cambodia itself, and that the issue can only be appropriately addressed within the context of a negotiated settlement of the larger conflict. While the June Conference may not be the appropriate forum for dealing with the Cambodian situation, it would indeed be unfortunate if, at this critical juncture, international attention were not also directed in some significant way to the plight of the Cambodian displaced.

In anticipation of the Conference, subcommittees representing the principal participants have been working to frame operational mechanisms for implementing the measures called for by the Plan. The following is a discussion of the specific issues being addressed by the proposed Plan. A subsequent section of the paper highlights concerns regarding the situation of the displaced Cambodians at the Thai border.

Deterrence of "Clandestine Departure"

The proposed Plan calls for "humane measures" to deter or reduce unauthorized clandestine departures from Vietnam. Two approaches for achieving that goal are under review:

1.) continued law enforcement measures directed against those organizing clandestine departures; and

2.) coordinated international and domestic mass-media activities focussing on the dangers and disadvantages of clandestine departure and encouragement of the use of regular departure and other migration programs.

The calls, made most strongly by the ASEAN countries, for Vietnam to make substantial efforts to deter "clandestine departures" are based on an understandable concern to address the problem of continued mass exodus "at its root." Proponents of enforced controls on departures simultaneously call on Vietnam and the concerned resettlement countries to work to make legal migration programs the sole means of exit for those wishing to leave.

Whatever the intentions of this approach, there is a humanitarian concern that it will be difficult for people with a well-founded fear of persecution to benefit from more officially facilitated programs. For them there may be no alternative to clandestine flight. Additionally, what is being called for is continued enforcement of Vietnam's laws against "the organizing of illegal departures." It is the continued existence-in-force of this particular legal code, which also contains provisions for the punishment of **participants** in illegal departures, that is cited as a principle reason many asylum seekers in the region fear repatriation -- in spite of official Vietnamese assurances that prosecution would be waived for voluntary returnees.

Those supporting greater controls over clandestine departure emphasize that the Plan calls only for the prosecution of corrupt officials and unscrupulous persons who make a business of organizing boat departures. However, the implications that pressure for enforced departure controls may have for the general state of human rights in Vietnam are

disturbing. For the Vietnamese authorities to effectively enforce efforts to halt clandestine departures -- or even to crack down on organizers -- it would be necessary for them to implement police measures which would more severely restrict the already limited freedoms enjoyed by the larger society.

Not only would such measures impinge upon the basic right of individuals to leave their country of origin to seek asylum elsewhere, but enforcement at the local level would likely entail extensive surveillance of the general population, increased restrictions on private trade and domestic travel, and further erosion of individual security from arbitrary search, seizure or arrest. Furthermore, it should be borne in mind that Vietnam's highly decentralized administrative system gives local authorities a large degree of autonomy regarding the enforcement of "state security" directives. There is concern, therefore, that the effort being called for in the Plan might in fact increase the likelihood of local abuse of individual civil liberties, and provide even more opportunities for corruption on the part of low-level bureaucrats and security cadre. It would be ironic indeed to see the international community prevail upon Vietnam to essentially reverse its recent tentative steps towards a more open society -- with the unintended effect of actually reinforcing conditions which have helped produce refugees in the first place.

In view of such possible negative implications, it would appear to be more appropriate to concentrate international efforts on the proposed public information initiatives, and on the cooperative measures needed to make legal migration a more viable alternative for persons who might otherwise contemplate clandestine exit. Key to the success of these measures must be an effort to address the "resettlement expectations" held by many persons wanting to leave Vietnam. As argued earlier, such expectations have perhaps been encouraged by the "resettlement-for-asylum" framework by which the international community has long handled the outflow of boat peoples.

The Plan, if implemented consistently and fairly, has the potential for addressing resettlement expectations -- thereby perhaps alleviating some of the "pull-factors" which figure in individual decisions to undertake dangerous boat journeys. The extensive public information initiatives called for, however, will not be effective unless the more concrete elements of the Plan are successfully implemented.

In this regard, the actual expansion of regular avenues for legal departure, with improved access for qualified applicants, will be the most effective means of communicating the message that such are more desirable alternatives to clandestine departure. The actual implementation of a fair refugee status determination process by countries of first asylum will hopefully communicate that third-country resettlement will no longer be a "given" outcome for most Vietnamese asylum seekers -- and that eventual repatriation may turn out to be the only option available to those who cannot establish compelling claims to refugee status.

Effective operation of both of these elements, together, should have the effect of encouraging more realistic expectations on the part of those who have no strong claim to either refugee or legal emigrant status. In view of the growing prospects for improved domestic conditions in Vietnam, the option of remaining at home might then become the most attractive choice, after all, for many would-be migrants.

Programs for Legal Departure

In May 1979, the UNHCR and the Socialist Republic of Vietnam issued a seven-point Memorandum of Understanding, establishing the basis for regular legal emigration of Vietnamese citizens to countries willing to issue entry visas to them. Essentially, the agreement made provisions for the safe departure of persons seeking reunion with family members abroad, or for "humanitarian reasons" (which are not specified by the memorandum). The resulting program, known as the Orderly Departure Program (ODP) has facilitated the safe migration of some 160,000 Vietnamese to Western countries since its commencement. Almost one half of that number has gone to the United States. Primarily, ODP emigrants have been family reunification cases and Amerasian children -- who leave under a special bilateral arrangement between Vietnam and the United States. UNHCR officials are hopeful that as many as 40,000 persons may be able to depart under the program this year, if the presently high rates of movement continue.

Although the Geneva Meeting of July 1979 called for establishment of the ODP as an integral part of its plan to address the refugee crisis, it has been less than effective in stemming the flow of boat refugees. In

reality, the avenues by which Vietnamese can leave their native country outside of clandestine refugee channels are still somewhat limited. Hopes for an expansion of the ODP, to make it a truly effective alternative to clandestine boat departures, have been perennially dampened by bureaucratic and logistical bottlenecks -- and more significantly, by political and diplomatic differences between Vietnam and the receiving countries. Until the recent shift in the temporary-asylum policies of countries in the region, the prospect of relatively easier access to third-country refugee resettlement made the risks of clandestine flight an acceptable alternative to those whose hopes for legal migration were frustrated.

Among the chronic problems plaguing the ODP over the years have been: poor access to the program for many persons living in provincial areas, charges of corruption or indifference on the part of local officials, and disagreements between Vietnam and the receiving countries over eligibility criteria and processing modalities for persons applying for exit permits and entry visas. During the last eighteen months, much progress has been made towards resolving many of the technical aspects of operating the program -- especially in areas such as interviewing and acceptance procedures, medical examinations for migrants, and transportation.

Factors continuing to impede more effective use of the ODP include uneven access to the program within Vietnam, and ceilings on the numbers of persons Western countries are willing to receive each year. Another limiting factor is that the criteria used by most receiving countries in determining whom they will admit under legal departure programs are not broad enough to accommodate the many people who have legitimate reasons for wanting to leave. Most Western countries restrict admission to those seeking family reunification.[3] Vietnam's own restrictions on exit permission are indicative of the fact that the right to freely emigrate from that country has yet to be fully realized.

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[3] The United States is an exception in considering ODP applicants for admission as refugees. In a recent policy change, however, the United States is screening applicants to determine if they meet the strict international definition of a refugee which has been incorporated in U.S. law. While those denied refugee status are currently offered admission under the extraordinary parole authority of the Attorney General, the inadequacy of existing U.S. law to deal with the range of individuals seeking admission from Vietnam is indicative of the difficulty in using ODP as the sole means of departure.

Despite these problems and limitations, the goal of an expanded ODP must be an essential centerpiece of any new initiatives undertaken. It is hoped that, if properly managed and made more widely accessible to persons outside of Ho Chi Minh City and nearby provinces, this program would become the primary means of exit for persons wishing to emigrate from Vietnam. As such, it could promise to become a truly effective alternative (and deterrent) to dangerous clandestine boat and overland departures for many persons. To achieve this goal will require the devotion of considerable resources, and sustained political will on the part of all of the countries concerned.

Nonetheless, it needs to be pointed out that expanded legal migration channels may never be a realistic consideration for those persons who will feel compelled to flee for fear of persecution, or because of deprivation of essential human rights. Since 1986, there have been some significant, albeit tentative, signs of liberalization in Vietnamese society. Positive though the changes have been, individual civil liberties are still fairly restricted -- particularly as regards the rights and participation of individuals associated with the former Saigon government, and others deemed to be "counter-revolutionary." Persons in these categories who might wish to leave the country are not likely to want to apply to state authorities for exit permission; and it is unlikely that they would be inclined to wait patiently for a more "orderly" means of exit. Moreover, any such persons who do not have close relatives abroad are ineligible for exit permits, or for acceptance as immigrants to most receiving countries, under what is essentially a family reunification program. Because of these realities, it is all the more critical that the June Conference affirm unequivocally the right to asylum and international protection for the many who may continue to flee Vietnam in years to come.

A matter for urgent attention at the impending Conference is the situation of former political prisoners and re-education camp detainees in Vietnam who are not yet able to emigrate via the ODP. This is a sizeable group of potential asylum seekers (estimates range from 100,000 to as many as 500,000 persons, including accompanying family members), for whom inclusion in the ODP should be the concern of all countries working to resolve the region's refugee problem. Not only is their need for a viable alternative to clandestine departure a pressing one, but their

plight is a painful legacy of a long war which continues to divide former antagonists.

Stigmatized by class background, and by association with the vanquished Saigon regime, many former re-education camp detainees continue to live on the margins of Vietnam's socialist society. Because of a long-standing impasse between the United States and Vietnam over the issue, these persons have generally not had access to legal emigration channels. Though the issue is characterized by both sides as one of humanitarian concern, it has inevitably become a political one, having clear linkages not only to the bitter conflict of the past, but to the still unresolved relationship between the two countries. The presently bitter nature of that relationship may well be one of the most tenacious obstacles to achieving the truly effective ODP envisioned by the Plan.

Fitful negotiations on the matter of the former detainees, which commenced in 1982, have been marked by Vietnam's insistence that the matter be pursued through direct bilateral talks, and by the United States' contention that it be handled under the auspices of the UNHCR-sponsored ODP. Hanoi has expressed concern that former detainees might engage in hostile acts against the country once abroad, while Washington has been reluctant to accept large numbers released **en masse**, without qualification, or reference to the eligibility of individual cases. Formal discussions on the topic were suspended by the Vietnamese in August of last year -- ostensibly because of State Department testimony in congressional hearings which was perceived as hostile and unconciliatory by Hanoi. The Vietnamese have maintained since that time that a resumption of negotiations is not yet appropriate.

The situation is a potentially volatile one, which can be expected to produce continued refugee flight to neighboring countries in the region, if a remedy to the problem is not forthcoming. Multilateral support for the resolution of this issue by the International Conference may prove to be crucial in achieving what is an eminently worthy humanitarian objective. Though described in the proposed Plan as a bilateral matter for discussion by the United States and Vietnam, the size and nature of the problem has serious implications for all parties concerned with the region's refugee situation. Of all of the groups of persons in Vietnam who have a legitimate claim to refugee status, it would appear that the former re-education camp detainees, and other persons imprisoned over

the years for political reasons, have some of the most compelling cases for international attention.

Ensuring Safe Arrival and Protection for Asylum Seekers

One of the most disturbing consequences of the breakdown of the 1979 agreements has been the deterioration of conditions of safe arrival, reception, and protection for Vietnamese asylum seekers attempting to reach the shores of neighboring countries. The Plan rightly reaffirms the principle of temporary asylum, by committing all of the countries in the region to ensuring safe arrival and reception for all asylum seekers, regardless of their mode of arrival. UNHCR is to have complete and immediate access to all new arrivals. Further, the Plan specifies that all new arrivals are to be transferred to temporary-asylum camps, and will be provided assistance and timely access to the refugee status determination process. This provision is crucial, as it firmly establishes the right of asylum seekers in the region to protection and humane treatment, and stipulates that regional authorities share responsibility with the rest of the international community in seeing that this objective is achieved.

The Plan is seriously deficient, however, in that it makes no specific reference to the urgent need for an international recommitment to strong protection measures to be enforced on the high seas. With the overall worsening of protection conditions throughout the region, in the unfavorable climate of the past two years, anti-piracy enforcement as well as international cooperation on rescue-at-sea efforts have lapsed. Piracy incidents occur with increasing frequency -- and, reportedly, with alarming brutality. From survivor reports, it is apparent that sea pirates often sink the boats they attack and attempt to kill all passengers, in order to avoid later prosecution. In a setting in which regional authorities and military forces have regularly denied entry to asylum seekers and "re-directed" their boats, it appears that there has been little disincentive to pirates to descend on their prey with a renewed vengeance.

If the June Conference is to adequately address the present crisis in the region, firm new international commitments must be made to enforce protection for asylum seekers on the high seas, over and above those applaudable measures which guarantee safe reception upon reach-

ing shore. Substantial resources need to be allocated to bolster anti-piracy and rescue-at-sea endeavors and close international cooperation on these urgent matters needs to be re-affirmed.

Determination of Refugee Status

In mid-March 1989, the principal first-asylum countries announced that all Vietnamese asylum seekers arriving thereafter would be subject to refugee status determination procedures, similar to those in effect in Hong Kong since June 1988. New arrivals will not have automatic access to third-country resettlement, pending determination of status. The procedures for status determination, which are still being worked out by the countries concerned, will not go into effect until some time after the International Conference this June.

Measures under consideration for a region-wide refugee status determination process envision "screening" programs to be implemented in each country of temporary asylum by national authorities, with monitoring by the UNHCR. Under such an arrangement, persons determined not to be refugees would be placed in temporary holding centers under international assistance, until their safe repatriation can be facilitated. Those who can establish claims for refugee status as defined by international refugee conventions are to be processed for third-country resettlement, or would have the option of voluntary repatriation.

Most certainly, the consideration of measures for refugee status determination and repatriation (voluntary or otherwise) has proven to be the most controversial aspect of the present dialogue. While such a component is essential to the structuring of any truly comprehensive approach to refugee problems, the manner in which it is implemented is likely to have far reaching implications.

Some critics of this element of the Plan argue that virtually all Vietnamese asylum seekers in the region have legitimate claims to refugee status, regardless of their reasons for flight, because of the existence-in-force of Vietnam's legal penalties for clandestine departures. Consequently, it is argued, such persons would have a legitimate fear of being

repatriated, unless Vietnam formally rescinds the laws in question.[4] Although Vietnam has stated that voluntary returnees will not be subject to prosecution for illegal departure, no such guarantees have been given for persons deported and returned against their will (a measure which Vietnam has not agreed to, in any case). Not only do the laws remain in effect, but matters are further complicated by the proposed Plan's article calling for Vietnam to enforce its restrictions on clandestine departures.

The question is also raised as to what commitments and responsibilities will be undertaken by countries in the region who are to conduct refugee status determinations. While none of the ASEAN countries except the Philippines are signatories to the 1951 U.N. Convention Relating to the Status of Refugees, the Plan specifies that status determinations are to be done in accordance with Convention criteria. UNHCR is to participate in an observer and advisory capacity. It should follow, therefore, that countries conducting status determinations should bear a responsibility for ensuring protection and asylum for those they determine to have valid refugee claims. In exercising their right to control entry and determine the status of asylum seekers, it would also seem that these countries would rightly share some responsibility for achieving a humane resolution of the situation of those determined **not** to be refugees.

If, however, the ASEAN countries see the resolution of the above issues as the primary responsibility of the Western countries and Vietnam, then perhaps consideration should be given to an alternative arrangement by which the UNHCR would take on a more central role in coordinating the status determination process for asylum seekers in the region. Such an alternative, though, would detract from efforts to gain the full participation of both ASEAN and Vietnam in achieving solutions to what is very much a regional, as well as international, problem. Even more disturbing, this would only further undermine efforts to establish the sense that the protection of asylum seekers and refugees in the region is first and foremost a matter for collective respect of basic human rights.

Even those who support the concept of a regional "screening" mechanism question whether in fact countries in the region have the

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[4] Statement by Nongovernmental Organizations at the Preparatory Meetings to the International Conference on Indochinese Refugees: March 7-8, 1989.

capability, or the will, to implement effective status determination programs. The experiences of Thailand and Hong Kong in operating "refugee screening programs" are most often referred to as examples of some of the serious problems which are very likely to be encountered -- on a region-wide scale -- if the Plan goes into effect as proposed.

It bears pointing out that the record of Western countries, like the United States, in operating fair and effective status determination programs has been less than sterling. To determine refugee status for individuals is a highly complex, subjective matter, taxing even to the fairest and keenest of examiners. In the overcrowded and often unstable circumstances of most first-asylum settings, notions of objectivity, fairness, and due process are often subordinated to bureaucratic demands of time and numbers -- not to speak of political considerations, or personal bias. In the "more favorable" environments of North America or Western Europe, the concerns are much the same, and the role models are not especially inspiring.

Thailand's program, in effect for Laotian asylum seekers since 1985, has been widely criticized on such points as local corruption, poor application of standard refugee determination criteria, and lack of access to the process for new arrivals. The latter has been a particular problem for highlanders who make up a large proportion of asylum seekers from Laos. Further complicating matters has been the tendency of Thai authorities to rely heavily on third-country resettlement criteria (family relationships, or migrant eligibility such as language or vocational skills) -- rather than assessing claims of persecution -- in making individual refugee status determinations. This evidences a pre-occupation with a person's resettlement potential, rather than the merits of their need for asylum and protection. It also is a strong indicator that the option of resettlement abroad has been viewed by Thai authorities as the more desirable alternative to a buildup of a large residual population of "screened out" persons, for whom a timely repatriation is uncertain.

With regard to Hong Kong's program, in effect since June 1988, a major criticism has been that negative attitudes prevalent among the responsible authorities prejudge the process and that fair hearings for asylum seekers are therefore unlikely. Shortly after announcing the new screening policy last year, Hong Kong government officials estimated that only 10 percent of newly arrived Vietnamese in the colony, most of whom

are from northern Vietnam, were likely to receive refugee status. In fact, only three persons have so far been judged to meet refugee criteria, with an additional 127 "screened in" on the basis of family reunification with relatives who had arrived in the colony before June 1988. As of the end of April, 1989, 1,200 persons had been "screened out." At that time, 12,170 persons were still awaiting status determination interviews. Reportedly, virtually all of those cases denied refugee status are in the process of appeal.

Assuming that even the most generous and well-administered system will result in denials of refugee claims, the issue of the "screened out" must be addressed by the International Conference, as must Vietnam's refusal to receive back its citizens who are determined not to be refugees but who are unwilling to return to their homeland. The Conference will need to deal constructively with ways to resolve the situation of these persons, who as "non-refugees" are not likely to be accorded the protection of indefinite temporary asylum or the option of eventual third-country resettlement.

While taking into account the historical difficulties and the potential pitfalls inherent in undertaking a status determination process, immediate efforts to establish such a process in the region should be seen as essential. The objective in this is not only to deter the mass exodus of non-refugee migrants -- but more importantly, to safeguard asylum and protection rights for **bonafide** refugees who will still be in desperate need of such protection for the foreseeable future. Such a process, if fairly administered, would permit a more rational framework for handling refugee matters in Southeast Asia, in a manner consistent with refugee protection and human rights instruments in effect in other parts of the world.

Continued Resettlement of Refugees

The proposed Comprehensive Plan of Action calls for renewed commitments by Western countries to the continued resettlement of persons determined to have valid refugee status claims. If not willing to avail themselves of voluntary repatriation, long-staying refugees and persons who arrived in first-asylum countries before mid-March 1989

would also be resettled in third countries. Most probably, this will necessitate a cooperative "sharing out" of commitments by third countries to resettle this population within an agreed upon time frame. Under such an arrangement, persons refusing offers of resettlement by specific countries would no longer be eligible for resettlement.

It will be important, though, to effect an appropriate resettlement process which will not act as a "magnet" -- encouraging the flight of would-be migrants who do not suffer persecution in their home countries or for whom legal migration is an option. Towards this end, cooperative efforts are required to ensure that status determinations be made according to international refugee criteria and not on the basis of an applicant's potential eligibility for third-country resettlement.

Additionally, persons who would have qualified for departure from Vietnam under regular migration programs, such as the ODP, should not be processed for third-country resettlement or immigration more quickly than would have been possible via legal channels in their own country. To allow a more expeditious resettlement process for refugees in first-asylum situations might be to signal potential migrants in Vietnam that clandestine departure might still be an attractive alternative, in spite of the risks involved. An exception should be made, however, for those who might have been endangered had they stayed inside Vietnam to await orderly departure. Particular consideration should be given to victims of violence or traumatic events suffered during their crossings, or while in the camps.

With regard to the situation of the older group of Vietnamese long-stayers and others who arrived before mid-March 1989, third-country resettlement should only be offered once measures for status determination and repatriation are fully in place for handling new arrivals of boat people. To process the long-stayers for resettlement before the new arrangements are effectively functioning might precipitate additional influxes of persons hoping to "get in before the gate closes."

Repatriation

Present conditions in Vietnam, though significantly better than during 1978-80, are by no means stable enough to permit easy solutions for those denied refugee status. Although denial of refugee status theoretically permits involuntary return to one's country of origin, relatively few people have so far been received back -- even on a voluntary basis.

On December 13, 1988, a "Memorandum of Understanding" was issued by the UNHCR and the Socialist Republic of Vietnam (SRV), regarding voluntary repatriation. This detailed agreement states that persons returning voluntarily will not be subject to prosecution or discrimination; that they will be allowed to return to their places of origin; and that the UNHCR, as the agency assisting in their return and reintegration, would have full access to monitor the situation of returnees. The Vietnamese authorities, as discussed earlier, have emphasized their opposition to receiving back any persons repatriated against their will.

Within the context of this understanding, the United Kingdom and the Hong Kong government have negotiated arrangements with Vietnam for voluntary repatriation. Since Hong Kong's refugee screening policy went into effect in June 1988, several hundred boat people there have requested repatriation. A Vietnamese consular team processed and approved the applications of an initial 75 people, who returned to Vietnam under UNHCR auspices on 2 March. A second group, of 65 people, returned on 12 May.

The people in these initial two groups were allowed to return to their home villages, reportedly without incident. According to the UNHCR and Western journalists permitted to visit returnees in their villages, there have been no reprisals or punishments; though the groups received stern warnings on arrival in Hanoi that any further efforts to leave the country illegally would be prosecuted.

Additional small groups are expected to return during the coming months. Whether any successful large-scale repatriation actually takes place remains to be seen, as many of the newly arrived Vietnamese detained in the colony's holding centers have expressed their unwillingness to return. There is concern among some officials and humanitarian

agency workers over reports that people who have applied to return have been threatened with violence by other detainees who oppose repatriation programs of any kind.

At present, there are no formal repatriation agreements between Vietnam and the ASEAN countries, though substantive discussions on the matter have taken place with Thailand, Malaysia and the Philippines. It is understood, however, that the UNHCR-SRV agreement outlines the general principles on which other regional agreements are likely to be based.

While most countries party to the present dialogue (including Vietnam) insist that any repatriation be strictly voluntary, the normal implication of a status determination program is that people determined not to be refugees or qualified legal immigrants would be subject to deportation. The draft Plan states that, while every effort is to be made to encourage voluntary repatriation, "persons determined not to be refugees should return to their country of origin in accordance with international practices reflecting the responsibilities of states towards their own citizens" [Article 6(a)]. This is problematic, though, since neither the conditional guarantees nor the diplomatic arrangements necessary to ensure the safe deportation of non-refugees to Vietnam presently exist.

Experience with Thailand's screening program for Laotian asylum seekers suggests that even where agreed to in principle, the deportation of persons without refugee status cannot be effectively and safely carried out in the absence of close cooperation between the countries concerned. Vietnam's willingness to cooperate with the international community in this regard will be crucial. Without it, those determined by countries of first asylum not to be refugees would be stranded in a sort of "legal limbo," without adequate guarantees of long-term protection or durable solutions. Some critics argue, with good reason, that if persons choose to return only when faced with indefinite detention in prison-like conditions, the term "voluntary repatriation" cannot be used with much of a sense of integrity.

With regard to the matter of voluntary repatriation as a durable solution for **bonafide** refugees, the experience of the Thai-Lao program in effect since 1982 is also instructive. Since that program's commencement, only some 3,600 persons have chosen to return under it. The UNHCR

estimates that perhaps 15,000 have returned to Laos on their own, outside of formal channels. In the wake of recently improved relations between Thailand and Laos, the pace of the program has picked up, with some 211 persons having returned between 1 January and 15 April 1989, as compared to a total of 267 for the whole of last year. Some observers argue, however, that even though workable arrangements for safe return exist, with the UNHCR actively assisting and monitoring returnees, relatively few refugees are willing to repatriate voluntarily so long as conditions in the home country remain uncertain -- and while the more attractive option of resettlement in the West is widely available.

Policy makers and representatives of governments which actively support the Plan express hope that successful voluntary repatriation and reintegration of the initial groups of returnees will provide the impetus for larger numbers of persons in the camps to accept this as a desirable option. Verification by the UNHCR, and other international agencies, of humane treatment and successful reintegration of returnees will be crucial to the credibility of this aspect of the Plan. In spite of such potential, however -- as in the case of Laotian refugees in Thailand -- it is unlikely that many will consider it seriously as long as hopes of eventual resettlement are entertained.

The success of any repatriation effort must take into account the serious economic problems of Vietnam -- problems that are likely to impede its ability to reintegrate returnees. Here, the international community must strike a balance. On the one hand, Vietnam should not be financially "rewarded" for taking back its own citizens, particularly since many have left because of conditions of Vietnam's own making. On the other hand, the country is in desperate need of assistance, particularly for such an undertaking on any large scale. According to the UNHCR-SRV Memorandum of Understanding, persons returning to Vietnam are to be allowed to settle in their places of origin, with the UNHCR obtaining funds from international donors to provide appropriate reintegration assistance to the returnees.[5]

It is imperative that the UNHCR and the concerned countries sustain serious negotiations to explore all possibilities for the safe, internationally assisted repatriation of voluntary returnees. This should be an

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[5] UNHCR Press Release: REF/1620, 14 December 1988.

arrangement which would also help lay the foundation for the eventual deportation of non-refugees -- conditioned on adequate safeguards and guarantees from Vietnam, with appropriate international assistance and monitoring. Given the new framework of mutually supporting commitments expected to arise from the International Conference, this should be an attainable goal.

The Situation of Laotian Refugees in Thailand

While present attention is focused primarily on the exodus of people from Vietnam, the agenda of issues for consideration by the International Conference includes a secondary discussion of the situation of Laotian asylum seekers in Thailand.

Measures indicated by the proposed Comprehensive Plan of Action for Laotian asylum seekers in Thailand include:

- an improvement in Thailand's refugee determination "screening" program for Laotians, in effect since 1985;
- assurance of safe arrival, and full access for all Laotian asylum seekers to the screening program;
- a simplification of existing arrangements and procedures concerning the voluntary repatriation of refugees and deportation of non-refugee entrants;
- expeditious return of voluntary repatriates and deportees to Laos; and
- continued processing of qualified Laotian refugees for third-country resettlement.

Final arrangements for implementation of the Plan's proposals need to be worked out through negotiations between Thailand, Laos and the UNHCR.

The recent trend in improved relations between Thailand and Laos is expected to produce substantial progress in resolving the plight of some 76,000 Laotians in first-asylum camps and detention centers, many of whom are among the region's longest staying refugees. During Thai prime minister Chatchai Choonhavan's ground-breaking visit to Laos in December 1988, the two countries issued a joint statement which included an affirmation of commitment to work closely in addressing this issue. High-level discussions between the two countries since then have apparently resulted in progress towards simplifying arrangements for voluntary repatriation and expediting the safe return of persons determined not to be refugees. As a result, Laos recently indicated its willingness to receive back 150 people per month (both voluntary repatriates and "screened out" deportees), and will consider a larger number if adequate reintegration assistance is provided by the UNHCR.

Curiously, the draft wording of the Comprehensive Plan of Action lacks any reference to steps for regularizing legal departure channels for people wishing to emigrate from Laos. While some possibilities currently exist for immigrant visa processing via foreign embassies in Vientiene, the limiting factor is that exit permission is still not easily obtainable. As in Vietnam, people released from re-education "Seminar" (many of whom are former soldiers and ex-officials of the pre-1975 regime) do not have access to legal departure. Reportedly, many are fearful of the possibility of being re-arrested should they apply to state authorities for exit visas. For many Laotians then, clandestine entry into Thailand continues to be the principal means of exit from their country.

Having lost as much as ten percent of its population since 1975 to migration, the Laotian authorities may be understandably concerned to prevent the further drain of talent which would be risked by having a more liberal legal exit policy.[6] However, it would seem that wider access to legal migration would be seen as a more acceptable alternative to the possible clandestine flight of the same talent. As in the case of Vietnam, international attention ought to be focused on the right of former political prisoners in Laos to be able to emigrate through safe and normal channels.

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[6] More than 375,000 persons have left Laos since 1975. The official Lao government census as of March 1985 indicated a total population of 3.6 million.

While any new "comprehensive approach" needs to be based on broad recognition of international refugee rights standards, there is concern that particular arrangements implemented for one population group (Vietnamese boat people, for example) should not be seen as having universal applications for other groups -- such as lowland or highland Laotians in Thailand -- for whom less formal solutions might eventually be found. Each group of refugees and displaced persons in the various countries of asylum have distinct ethnic and political backgrounds. Each has fled different conditions, and each exists in a particular local asylum environment. The range of available options for resolving any given group's plight may be quite variable.

The circumstances of ethnic Lao and highlanders from Laos in Thailand are quite unique -- given the similar ethnic composition of the Thai-Lao border areas, and the closely inter-linked history of the two countries. The options for viable repatriation arrangements (both the official programs, and unofficial, "spontaneous" voluntary returns by individuals) appear to be much greater for these groups; as are the seldom discussed possibilities for eventual local settlement. The latter most certainly would need to take place over time, and within a much less formal context. Because of the sensitivities of making this an official agenda item, the issue of local settlement is not being addressed by the current international proceedings; but a more flexible if gradual approach to the issue remains the hope of many concerned observers.

Cambodian Displaced Persons at the Thai Border

In view of the fast changing political circumstances in the region, including significant movement towards a political settlement of the Cambodian conflict, it is important to note that the future of some 350,000 Cambodians living on the border between Thailand and Cambodia is not on the agenda of the International Conference. Not recognized as refugees by Thailand or the United Nations, this population resides in camps administered by factions of the Cambodian resistance, including the Khmer Rouge. In their special status as "displaced persons" -- technically speaking, the population under the control of the United Nations recognized Coalition Government of Democratic Kampuchea (CGDK) -- the Cambodians at the border are regarded by the upcoming

Conference as a separate concern, to be resolved within the larger context of a political settlement of the Cambodian conflict.

The protection of the displaced Cambodians has been a perennial problem, with all of the camps being subject to military attacks and banditry. During the past year, the Thai authorities have made an admirable effort to address protection problems in the camps controlled by the non-communist CGDK factions, through the creation of a specially trained "Displaced Person Protection Unit" (DPPU). However, the DPPU is still limited in its ability to control internal camp violence.

More seriously, it should be emphasized that as long as the encampments remain in such close proximity to the border and CGDK armed forces are present in civilian areas, the displaced persons will remain dangerously exposed to warfare and will continue to be vulnerable to random violence and abuse. The situation of some 50,000 persons in border camps administered by the Khmer Rouge could be described as desperate by comparison.[7]

The Khmer Rouge have consistently denied international relief agencies full access to their camps, and in the last year have forcibly relocated some 20,000 people under their control to contested war zones along the border or inside Cambodia. It is therefore crucial that international attention be given to their situation as efforts are made to develop a new, broader consensus for addressing the refugee problems of the region.

The plight of the displaced Cambodians is a particularly tragic one: having fled violent social upheaval, civil war, political repression and famine, they now live in tense and uncertain conditions as hostages of a larger political conflict. Regardless of their "official" status, they would seem to be most deserving of safe haven under international protection. In their present circumstances they have neither such protection, nor the freedom of choosing to return to their homeland or remain of their own volition in the resistance-controlled encampments. Chronic abuse of

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[7] Ref. Asia Watch report: Khmer Rouge Abuses Along the Thai-Cambodian Border (February 1989), page 8. The American human rights organization Asia Watch, in its report, indicates that according to humanitarian organization officials at the border, there may be again at least the same number of persons in other Khmer Rouge controlled areas not accessible to international monitoring.

human rights by the Khmer Rouge, and their persistent refusal to allow international organizations access to border areas under their control, demonstrates most dramatically the precarious existence of this vulnerable population.

On 23 January, 1989, after years of difficult negotiations, the UNHCR concluded a repatriation agreement with the Vietnamese-backed People's Republic of Kampuchea (PRK) in Phnom Penh. The **aide-memoire** outlining the agreement provides for the voluntary return of Cambodian refugees, without respect to their country of current residence (the term **"refugee"**, in the document, is not specifically defined). Further, it affirms the principles of non-discrimination against returnees and equality of rights and obligations with other citizens resident in Cambodia. The UNHCR, as the responsible international agency, would facilitate applications for repatriation, and would assist returnees in their reintegration through appropriate programs.

The **aide-memoire** does not specifically address itself to the situation of the "displaced persons" at the Thai border, but it does provide the foundation for an important framework within which the long-term resolution of their plight might take place. Recent statements by the Royal Thai Government have acknowledged UNHCR's announcement of the agreement, and have suggested international efforts to prepare the border population for eventual repatriation, pending resolution of the Cambodian conflict.

While this is a hopeful development, a critical problem remains in the UNHCR's lack of a full protection and durable solutions mandate with regard to the border population. In the absence of such a mandate, and without freedom for the displaced persons to move out from the resistance-controlled camps, it is questionable whether large numbers of people would have full and unhindered access to a UNHCR-facilitated program. Further, without a satisfactory settlement of the Cambodian conflict, there are no guarantees that persons would be voluntarily returned to safe and stable conditions inside their home country. The forced movement of thousands by the Khmer Rouge last year is precisely the sort of situation the international community is unable or unwilling to prevent under the present circumstances.

It is essential, therefore, that there not only be a viable resolution of the larger conflict, but that the UNHCR be given an immediate mandate for protection of displaced Cambodians during the interim. Such a mandate, though, will be impossible to achieve without recognition by the international community, including Thailand, that the welfare of innocent civilians should take precedence over concerns to provide base areas for the support of the CGDK military forces. This is the crucial requisite needed to ensure that safe, and truly voluntary, repatriation to secure conditions can be facilitated for the large numbers of people now stranded at the border.

CONCLUSION

Central among the goals of the present international dialogue is to achieve a broad consensus on general principles. Such an achievement would be a starting point from which steps can be taken to implement flexible policies and programs based on that consensus. In seriously considering these new directions, it is apparent to many concerned parties that significant changes now taking place in the larger political landscape must develop more fully before long-range solutions to the refugee problem can become a reality.

The still unsettled conditions in the countries of Indochina may impede or limit effective implementation of new measures such as "screening" or repatriation in the short term. However, the need to work out general agreements based on sound humanitarian principles could not be more urgent. Just because the successful repatriation and reintegration of large numbers of persons may be difficult to effect, the argument that such measures should not be considered now is not a valid one -- particularly in light of evidence of changing circumstances in the countries concerned.

Informed observers have characterized the new framework under discussion as an endeavor to "buy time" -- in order to avert a further deterioration of asylum and protection during this period of considerable flux, change, and still uncertain hope. The aim, then, is to respond to the immediate crisis situation, while keeping various options open and setting in motion new arrangements which will become more workable within the climate of improved diplomatic and trade relations with the countries of Indochina.

A resolution of the Cambodian conflict, and an end to the diplomatic and economic isolation of Vietnam, Laos and Cambodia, would greatly enhance the options for addressing the root problems which produce flight from those countries. Within such a significantly different context, humanitarian arrangements for dealing with refugee problems may have the potential for becoming truly comprehensive, and -- hopefully -- much more effective than the emergency oriented measures which have been the norm for more than a decade.

Looking towards the future, it can be anticipated that programs for direct legal departure and repatriation will eventually be able to take place within the context of normalized diplomatic relations between the countries concerned. As such, these would be functions of regular consular and immigration procedures and controls. Such an arrangement would also permit more adequate international monitoring of country conditions and events, and would make possible the guarantees needed to ensure that safe and orderly departure and return are respected as basic rights of citizens.

At the heart of the matter lies the challenge to find effective ways to address the root causes of mass exodus, while more firmly establishing an international consensus regarding responsibilities for protection and assistance to persons seeking asylum. Only on such a foundation can a full range of truly durable solutions to the region's refugee problem be found. Significantly, the present dialogue in anticipation of the International Conference has entailed close cooperation and discussion among all of the concerned parties -- countries of asylum, donor and resettlement countries, and countries of origin. Such dialogue is fundamental to achieving a more comprehensive approach to this enduring crisis.

The makings of a new international consensus are surely as fragile as the old framework which is already so badly eroded. Our failure to engage now in constructive new thinking and then to move beyond general agreements to actual implementation of workable and humane solutions, will be felt by all concerned, with the refugees themselves being those most acutely affected. Moreover, failure to come to terms with the refugee situation in Southeast Asia may well threaten the very prospects for improved regional security and international cooperation which hold such great promise.

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